IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.69 OF 2005

IN

SUIT NO.1162 OF 1998

...

Smt.Kanchan Harish Pitale
and anr. ...Plaintiffs.

v/s.

M/s.Mamta Clinic & Maternity
and Nursing Home & ors. ...Defendants

...

Mr.G.B. Kedia for the Plaintiffs.

Mr.Ajay Fernandes i/b Ismail Nasikwala for
Defendants Nos. 2 & 3.

...

CORAM: D.K.DESHMUKH, J.

DATED: 3RD MARCH,2006

P.C.:

1. Even assuming that on 13-12-2004 the clerk of the

lawyer for the Defendant who had taken out this Notice of Motion had missed the case on board, as the Plaintiff was abandoning his own suit, no way the Defendant could have objected to the withdrawal of the suit. Probably he could have asked only for the costs. Therefore, even if the Defendant had remained present he could not have objected to the withdrawal of the suit. There is no question of setting aside the order passed by the court allowing the Plaintiff to withdraw his own suit.

2. So far as the relief claimed by prayer clause (b) is concerned, perusal of provisions of Order 1 Rule 10 of the CPC shows that substitution of the Defendant as Plaintiff can be permitted if the Defendant satisfies the court that he has a substantial question to be decided as against any of the other Defendants. If there is any substantial question to be decided between the Defendant and the Plaintiff, the Defendant cannot claim substitution as the Plaintiff. Therefore, relief claimed by prayer clause (b) also cannot be granted. Notice of Motion is totally misconceived and therefore, it is rejected.

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